

September 6, 2005

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: WC Docket No. 04-30 – Emergency Request for Declaratory Ruling – Additional
Ex Parte Filing By Gemini Networks CT, Inc. (“Gemini”) – Report of
Undisclosed Ex Parte Contacts**

Dear Ms. Dortch:

This further *ex parte* filing is in response to SBC’s September 1 filing regarding the latest Draft Decision, dated the same day (“Draft”), of the Connecticut Department of Public Utility Control (“Department”) in its Docket 02-05-04. Gemini intends to file substantive exceptions to the Draft and to participate in oral argument, currently scheduled for late September, on the Draft and such exceptions. Gemini will file its exceptions in this Docket through a further *ex parte*.

In previous *ex parte* filings, Gemini has reported to the Commission on developments in the State of Connecticut concerning the involvement of Department Commissioner Jack Goldberg with legislation affecting, among other things, the disposition of the unique SBC network elements which are the subject of this proceeding. Attached is a recent article from the Connecticut Law Tribune which reports that the Attorney General of Connecticut has initiated an investigation into the circumstances surrounding the enactment of that legislation, which was subsequently vetoed by the Governor of Connecticut.

On July 15, 2005, Gemini asked that the Commission initiate an investigation into “any...exchanges that may have occurred between Commissioner Goldberg’s Staff and the FCC Staff on the outcome” of this Docket, in light of at least one conversation that Commissioner Goldberg conceded took place between his staff and FCC staff. Reportedly, that conversation affected the shape of the legislation that was ultimately vetoed.

On August 17, Gemini inquired what, if any, action the Commission has taken to date on that July 15 request.

Gemini hereby respectfully reiterates that inquiry.



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Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being electronically filed through the ECFS.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul C. Besozzi', with a long horizontal line extending from the end of the signature to the right.

Paul C. Besozzi
Counsel for Gemini Networks CT, Inc.

cc: Office of Chairman Martin
Office of Commissioner Abernathy
Office of Commissioner Copps
Office of Commissioner Adelstein
Office of the General Counsel
Wireline Competition Bureau

VERNMENT & AGENCIES

15

Veto Won't End Telecom Fallout

By DAN LEVINE

Law Tribune Contributing Writer

The way state Sen. John Fonfara (D-Hartford) tells it, had telecom firms SBC and Gemini Networks CT been able to cut a deal in the final days of the legislative session, you wouldn't be reading this newspaper story right now.

Instead, the companies' battle has morphed into a state whistleblower investigation and ethics charges being flung back and forth.

The two sides were battling over a bill that would have made it easier for SBC to obtain regulatory approval for flexible pricing. Fonfara, the co-chairman of the Energy and Technology Committee, attempted to broker a sale of SBC's hybrid fiber coaxial (HFC) network to Gemini. It was meant to balance the competitive benefits SBC would have gained from the bill, Fonfara said.

But Gemini rejected the deal, so Fonfara moved forward with the legislation with different language, and that unleashed a series of events culminating with Gov. Jodi Rell's veto of the bill last week. Rell's veto, however, won't end the fallout.

Attorney General Richard Blumenthal confirmed to The Law Tribune the existence of a whistleblower investigation into the Department of Public Utility Control's dealings during last few days of the legislative session. Gemini, which is owned by millionaire investor Arnold Chase, had complained that DPUC Commissioner Jack Goldberg attended a meeting with Fonfara and representatives from SBC, but not Gemini.

At that meeting, the participants drafted a memorandum of understanding (MOU) that Gemini contends would have undone some of the DPUC's rulings ordering SBC to lease the HFC network.

That's a problem, contends Gemini's counsel, Jennifer Janelle of Shipman & Goodwin's Hartford office, because Goldberg might be called upon to arbitrate the dispute over the network. Gemini



Law Tribune File Photo

Gemini Network CT's counsel, Jennifer Janelle of Shipman & Goodwin, contends SBC attempted to short circuit the regulatory process by exerting behind-the-scenes political muscle at the state Capitol.

believes it is "wholly inappropriate for Commissioner Goldberg, as a trier of fact in

a pending arbitration, to participate in the negotiation of a secret MOU" concerning the subject of the arbitration, Janelle wrote in a letter to the governor's office.

"We are involved with the auditors in an investigation" of the DPUC, Blumenthal said, adding that he referred the matter to state auditors

"around late June."

But Goldberg was in the room merely to answer technical questions, Fonfara said, a practice common for these complicated issues. The DPUC declined to comment on the whistleblower investigation, but Goldberg has already recused himself from the arbitration.

From SBC's point of view, though, Gemini's charge against Goldberg is nothing more than "ethical McCarthyism," said John Emra, executive director of SBC External Affairs. The General Assembly passed the bill overwhelmingly, SBC's unionized employees joined management to lobby hard for it, and the only reason the governor vetoed it was because Gemini raised the ethics controversy in a charged environment, he said.

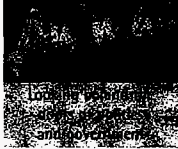
Indeed, Gemini has its own ethics issues, Emra asserted, because Janelle repeatedly negotiated with legislators and functioned as a lobbyist, but has not registered with the Office of State Ethics. Any person must register as a lobbyist if they communicate with legislators or administrators regarding state business and are paid over \$2,000 per year. Failure to do so will result in a \$10 per day late filing fee, up to \$10,000. Emra said SBC is "considering" filing a complaint about Janelle with the state.

Janelle all but dared SBC to do so, because she did not bill Chase anywhere near \$2,000 for lobbying activities, she said. Moreover, Janelle said she finds it ironic that she is accused of an ethical breach, when SBC attempted to short circuit the regulatory process by exerting behind-the-scenes political muscle at the state Capitol, while Janelle alienated the DPUC—where she must practice—by openly leveling the charge against Goldberg. "I was above board, and they're going after me for it," she said.

It is unclear at this point whether the legislature will attempt an override of Rell's veto. Emra estimates that SBC has lost over 400,000 customers in the past three years, mostly due to competition from cable companies who now offer long distance telephone service. The vetoed bill would have allowed SBC to adjust prices more quickly, in order to respond to its competition. The customer loss has also resulted in a reduction of hundreds of jobs, he said.

However, Gemini believes this pricing flexibility would devastate the market because there is so little competition, according to Janelle's letter to the governor.

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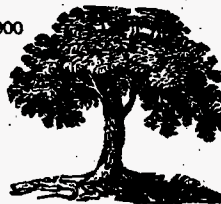
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